the land with a clear title. If land is taken by agreement it is necessarily taken only with such a title as the owner really has. In many cases there can be no room for doubt about this, and then agreement is a perfectly safe, and, of course, much more economical and expeditious method. Otherwise, proceed under the Act, because then the title acquired by Government cannot, under express provision of the law, be questioned.

I should also call attention to section 83 of the Forest Act (B. 80), which declares that land required for any purpose of the Act is deemed to be wanted for a "public purpose," and that the Land Acquisition Act consequently applies.

Section III.—Claims to Right-of-way or Water-course.

§ 1.—*Special character of the rights.*

It will be observed that, as regards their settlement, these claims are on a different footing to other rights, and that arises from their nature. A right-of-way, for example, cannot, in the nature of things, be compensated for. Either it is a necessity or it is not. If it is a necessity it must be left alone; the only alternative is to provide another road which is reasonably convenient and does as well as the original, though less inconvenient to the forest control. Rights of water-course, which may be of several kinds (rights to the use of water naturally flowing, or rights to take drainage or canal water for irrigation across the forest) are on the same footing[6].

Under the Indian Act, the Settlement Officer does not deal with such rights at all. He neither admits nor rejects them.

[6] Such rights are not numerous, nor usually of great importance. They may arise in hill districts, where channels to conduct the water of streams along the hill-side to cultivated fields are often constructed; such channels may pass through a forest. In the plains, canal cuts sometimes pass through fuel or other plantation and forest. In the case of canals some provisions relating to the passage of water-courses may have to be referred to in the North Indian Canal and Drainage Act VIII of 1873 (section 23 *et seq.*), and the Canal Acts of other provinces.

Such rights, however, occasionally arise when a stream passes through a forest.

Under the Burma Act if he admits a claim he makes a record accordingly, but this is all. Practically, rights-of-way for individuals are not known, and those which affect villages or the public at large are evidenced by the existence of at least a cleared and known track or dry weather road. It was considered sufficient to let the whole subject alone at the Settlement; no tracks or roads that exist being in any way interfered with.

§ 2.—*Power to alter Roads, &c.*

A general power is, however, given under section 24 (B. 24) to close at any time, a public or private way or water-course, when this is really unnecessary and interferes with the management of the forest; but this power can only be exercised with the previous sanction of Government, and *provided* that a substitute, "which the local Government deems to be reasonably convenient," has been constructed or provided.

The reason of this provision is, that a forest, when first being demarcated and settled, is not yet in a condition in which it can be said that a road in this or that direction is injurious or not, The management has yet to be developed. It may be that the division of the forest into compartments by cleared pathways, the clearing of fire lines and other such arrangements, may afford straight and convenient routes which may replace devious and uncertain tracks hitherto used. When this is pretty well known, it is time enough to close old objectionable roads and substitute the new ones. There can be no doubt that this plan is the best suited to the circumstances of the country. At the same time, as persons may bring forward claims, it is better (as the Burma Act provides) to allow the Settlement Officer simply to record them.

§ 3.—*Questions as to Width of Road, &c.*

It will be noticed that the Act contains no provision for defining what sort of right-of-way is allowed to exist, neither for this or that purpose,—of this or that width.

If the Settlement Officer should find it desirable to record some

definite terms regarding the width of the road, and whether it is solely for the use of human beings and not to drive cattle on,—or any other conditions (which would naturally be adjusted by him according to local circumstances and the requirements of the case), there would, I apprehend, be nothing to prevent his doing so if the conditions of the right had been adjusted by consent. If not, as far as the Forest Act is concerned, the only plan would be for the forest officer to get the Government sanction to arrangements proposed under section 24. He would mark out the road he considered a proper one, making it of a sufficient width, and he would explain, in submitting the matter for sanction, the reasons which led to the selection of the particular line, and the particular width of road[7].

[7] It is hardly necessary to caution the student that it is not every casual track that may happen to cross the forest, that constitutes a public or a private *way*. And if there is a question whether a particular track is or is not a "way" by public or private *right*, the point must be settled on its merits.

People are often in the habit of crossing over unfenced waste or forest, and yet they may acquire no right (per Abbot, C. J., in *Blundell* vs. *Catterall* (5, B and A, 315).

It may be interesting just to indicate some of the features of early and modern law on the subject of rights-of-way.

The Roman law (Justinian, Lib. II., Tit. iii—this has colored all the later laws) divided rights of way into three classes:—

(1) *Iter*, which was a simple right of passage for man on foot or on horseback,

(2) *Actus*, which was a right to drive cattle and vehicles,

(3) *Via*, the most general right, which included (1) and (2), and also (in the absence of special agreement to the contrary) the right of dragging timber, &c. over the land.

The extreme width of land that could be occupied by the complete right-of-way, in the absence of special terms of grant, &c., was 8 feet in a direct line, and 16 feet where it turned to change its direction.

The Bavarian *Landrecht* (Theil II, Kap. VIII, § 11) allows (in the absence of special terms) 3 feet for a simple right of passage and 8 feet (16 at turnings) for the right-of-way for cattle or carts.

The Prussian *Landrecht* (Theil I., Tit. 22, § 79, as quoted by Roth, §§ 263—65, and Eding, p. 99) allows 3 feet for simple passage, 4 feet if the way is to be ridden over, 8 feet (12 at turnings) for a cart-way, and 16 feet (24 at turnings) for cattle driving.

The Saxon law gives 3 feet and 8 feet, as the Bavarian, but allows circumstances to be considered in fixing a proper way for cattle-driving. (Qvenzel, p. 193.)

The Italian, French and Austrian laws do not prescribe any fixed breadth, but leave the right to be determined (in the absence of course of special evidence),

§ 4.—*Rights of Water-course.*

Rights of water-course do not need any special remarks, so far as they appear in the form of a claim to have a drainage channel or an irrigation channel taken across the forest land.

But claims which may come under this head will sometimes be made to the use of a stream which passes through the forest, or (what is analogous) to use a spring, or pool of water, in the forest, for domestic requirements or for watering cattle. Such a right is recognised among those called easements in English law[8], and it will be found that the right to use the water will always involve a right-of-way to get to the water, or to drive cattle to it, as the case may be.

I have known instances, in practice, of such rights claimed in a forest, and therefore I mention them. They should be in all cases recorded, or disputes will arise; and as the right-of-way to and from the water will necessarily be involved, the matter can be settled under section 24. Practically, there is no difficulty, for either the use of the water is a necessity which can be established, or it is not. If it is, the use of it *must* be allowed, and also of a way to get to it,—no substitute or compensation is possible: if it is not, that is to say, if other springs, reasonably convenient, exist, the use of the water and of a way to approach it can properly be refused.

according to the circumstances and the nature of the locality. The English law contains no special provisions on the subject, as far as I have been able to ascertain. I presume that the general circumstances would be taken into consideration.

A right-of-way may sometimes be required across intervening private lands to drag timber or other material out of a forest: without this the forest might be unworkable. The Burma Act makes express provision for this under the head "Control of timber in transit." The Indian Act makes no allusion to the subject; a strip of land for a timber road could, however, be expropriated. The only European law in which I have seen this right expressly asserted is in the Austrian Gesetz of December 1852, § 24. In France and Italy, the matter would probably be covered by the general provisions of the Civil Code, which require access to be allowed to "enclaves," *i.e.*, property surrounded by other estates, so that it cannot be got at without crossing one or more of them.

[8] Williams, p. 18.